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JAN 30 1970
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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 1024

CIMARRON COAL CORPORATION PETITIONER

VS

DISTRICT NO. 23, UNITED MINE WORKERS OF AMERICA, LOCAL UNION NO. 1076, LOCAL UNION NO. 1263, LOCAL UNION NO. 1467, LOCAL UNION NO. 8316, LOCAL UNION NO. 9205, LOCAL UNION NO. 9653, ALL LOCAL UNIONS OF DISTRICT NO. 23, UNITED MINE WORKERS OF AMERICA: ALVIE LEROY PATTERSON; WILLIAM CORNETT; ARTHUR COPE; T. H. HUMPHREY, JR.; KENNETH OSBURN; and CECIL DUVALL, RESPONDENTS.

On Writ of Certiorari to the Unitd States Court of Appeals for the Sixth Circuit.

BRIEF FOR RESPONDENTS

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INDEX

PAGE

STATEMENT 1

SUMMARY OF ARGUMENT 3

ARGUMENT 3-6

CONCLUSION 6

CITATIONS

Carter v. Herrin Motor Freight Lines, Inc. 131 F 2d 557 (1942) 5th Circuit 5

Donnelly Garment Co. v. Dubinsky, 154 F 2d 38 (1946) 8th Circuit 4

Lauf v. Shinner, 303 U. S. 323 3

Marine Cooks & Stewards, AFL, etc. v. Panama Steamship Company, Ltd., 80 S. Ct. 779, 362 U. S. 361 (1960) 4

STATUTES

Norris-LaGuardia Act:
Section 7 (29 USCA Sec. 107) 3

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STATEMENT:

MAY IT PLEASE THE COURT:

Respondents will make a brief statement of the key facts which are involved and attempt to be concise and to avoid repetition. Respondents will attempt to set forth the chain of events in chronological order as they occurred.

OCTOBER 10, 1968

This was the first confrontation between the pickets and employees. There were 75 to 100 pickets, (TR, page 48, 118). An agreement between Anderson, the Company President, and Patterson, spokesman for the pickets, resulted in the agreement

that each side would talk to the employees away from the other side and the formal vote was had which was apparently against union membership. Thereafter, the men were sent home. No attempt was made to enter the mine (TR, page 43) except Elmer Cain who passed through the picket line undisturbed, (TR, page 101, 124). The meeting and confrontation were calm. (TR, page 26).

OCTOBER 19, 1968

This is the first date of any notification either formally or informally to the local and state police.

OCTOBER 21, 1968

Anderson, together with some or all of his employees, approached the entrance to the mine in an apparent effort to pass through. Anderson was allowed through the line, however, a truck driven by Mr. Cain, so he testified, was stopped, both doors opened, and a person unkown, called him a son-of-a-bitch and told him to turn around, which he stated he did. (TR, page 97) The State Police and Sheriff arrived and the road was cleared and one car did gain entrance to the mine. There was no evidence that others tried while the police were there and there was no testimony that any request was made for escorts for any cars, (TR, page 82).

OCTOBER 22, 1968

Twelve men gained entry to the mine on this day through an entrance that was not used before nor after, (TR, page 77), and the testimony was that the others went home instead of going in, (TR, page 78, 79).

OCTOBER 23, 1968

The evidence is not clear what attempts were made on this day but apparently no one entered the mine.

No testimony was offered that any other attempts other

than these were ever made. There was no entry by the pickets on Company property at any time, nor any property damage nor any physical injury inflicted; nor any display of any weapons, clubs or other instruments which would be reasonably calculated to intimidate or be interpreted as a weapon, (TR, page 56, 57); nor was there any competent evidence of any threat other than what was said to Mr. Cain which certainly cannot be construed as a threat of violence.

SUMMARY OF ARGUMENT

1. The District Judge did find that a "labor dispute," as defined in the Norris-LaGuardia Act, did exist.

2. The burden of proving all of the requirements of Section 7 of the Norris-LaGuardia Act is upon the petitioner.

3. The Trial Judge made no finding as required under Section 7 (e) of the Norris-LaGuardia Act and the evidence did not support any such finding.

4. The character of the injunctive relief sought or granted is immaterial where the Court lacks jurisdiction.

FIRST ARGUMENT

The Trial Court did find a labor dispute to exist. The Court, in the first paragraph of its opinion given the day of the hearing, stated that " the case must be viewed in the posture of one seeking the issuance of an injunction in a labor dispute" (TR, p 156) and as authority for this holding, the Court cited *Lauf v Shinner 303 U. S. 323, (1938)*. It is further evident of the Court's finding and holding by the fact that the Court did, in its preliminary injunction, make the necessary finding of Section 7. Had the Court not felt there was a "labor dispute," it would not have been necessary to make such findings.

SECOND ARGUMENT

The burden of proving the requirement of Section 7 of

the Norris-LaGuardia Act is upon the petitioner, and it was the intention of Congress that the said Act be strictly interpreted because jurisdiction of the Federal Court in labor injunction cases was to be limited. *Marine Cooks & Stewards, AFL etc. v. Panama Steamship Company, Ltd., 80 S. Ct. 779 362 U. S. 361 (1960).*

The Court in *Donnelly Garment Co. v. Dubinsky, 154 F2d 38 (1946) 8th Circuit* commented upon the failure of the plaintiff to have the law enforement officers before the Court and noted that this should be done lest the Court conclude that their failure to produce the officers indicated that they would have testified against them.

THIRD ARGUMENT

The Appellate Court found that the District Judge's opinion failed to make a finding that "the public officers charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection," and further stated that indeed had he so found, the record did not support this finding and it was erroneous, (Appendix, p 15) The Court found that the requests for police protection were only pro forma as indicated by the evidence in the transcript. No request was made until October 19, 1968, (TR p 58). Only one phone call was made on the 21st and the 22nd and possibly two on the 23rd, (TR p 50). Both the State Police and Sheriff did answer the calls on each occasion. No request was made for escorts for the men, (TR p 82).

It would seem that while the police were there, requests could have been made for escorts. The evidence indicates, however, that it was not a break-down of local law enforcement that kept the men away or any threats of violence because on October 22, all the men could have entered the mine but only twelve did and the remaining men simply refused to go in,

(TR p 79) and there is no evidence that any of these twelve men, either then or later, were abused, threatened or otherwise intimidated. Any picket line is intimidating to some degree and it was this rather than the failure of police or the lack of protection that kept the men off their jobs.

It should further be noted that on October 10, the day of the first confrontation, Mr. Cain did get through the picket line undisturbed, apparently with the knowledge of the pickets, (TR p 101-124). No attempt was made by anyone else as Mr. Anderson stated to the men that they could go home rather than work if they so chose, and there is no evidence of any try to get through, (TR p 30).

In the Carter Case, *Carter v. Herrin Motor Freight Lines, Inc. 131 F 2d. 557 (1942) 5th Circuit,* the Court stated "the provision of the statute (Section 7) (e) was not written in the Act as a mere perfunctory jesture and it may not be perfunctory complied with."

The Court further said.

> "the language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Sec. 104 were no longer to be the subject of injunctive action."

The abrupt dismissal of the petitioner's sworn complaint, without remand for further proceedings, was within providence of the Court of Appeals for the 6th Circuit when the record failed to disclose sufficient facts or evidence to justify the Trial Court's ruling.

The question of damages was not presented to the Court.

FOURTH ARGUMENT

It is immaterial, in this case, what the law of Kentucky is because jurisdiction can be had only through the Federal Act, that is, Norris-LaGuardia Act.

This is not a case of a Federal Court applying state law. The prior decision of this Court and others are not in conflict with the opinion of the 6th Circuit.

CONCLUSION

For the reasons set forth, the respondents pray this Honorable Court to refuse to grant the Petition.

RESPECTFULLY SUBMITTED,

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